

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 446 of 1991

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

STATE OF GUJARAT

Versus

KANUBHAI J SALET

Appearance:

Mr.Umesh Trivedi, learned Addl. P.P. for the
appellant.

SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 10/09/96

ORAL JUDGMENT :

1. This State Appeal against the acquittal is directed against the judgment and order dated 30-3-91 passed by the Judicial Magistrate, First Class, Porbandar in Criminal Case No.5016/89 whereby the present respondents had been acquitted of the offence under S.7 of the Cinematograph Act, 1952.

2. On 20-8-89, 472 video cassettes without certificate of Censor Board, certain blank video cassettes and some other video cassettes, which were defective, were recovered from the possession of the respondents. Value of these cassettes were assessed to be Rs.65,800/- and they were sought to be prosecuted on the basis that they were running a Video Cassette Bank. The trial court has recorded that the Panchas had turned out to be hostile and both the Panchanamas i.e. Exhs.12 and 13 therefore, could not prove the recovery of these cassettes from the accused persons. The Panchas are common witnesses on both these documents and it has also been recorded by the Judicial Magistrate, First Class that the prosecution has also failed to show that the respondents were not having the necessary documents with regard to the VCR etc. The prosecution failed to give any cogent proof in support of its case against the three respondents-accused persons and accordingly the three respondents were acquitted.

3. I have gone through the impugned order and the relevant papers and I find that the recovery of the cassettes is not proved and the prosecution has also failed to prove beyond doubt that the respondents were not having the necessary documents in their possession with regard to the VCR. The order passed by the trial court, therefore, does not suffer from any infirmity. When the Panchas had turned out to be hostile, the recovery can not be made use of to punish the respondents.

4. Looking to the facts and circumstances of this case and having gone through the reasons given by the trial court, I do not feel inclined to interfere with the order of acquittal passed by the trial court. There is no substance in this Appeal and the same is hereby dismissed.